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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN-00-231-52523 Office: Nebraska Service Center Date: MAY 07 2002

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER: [redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is engaged in the marketing of hardware for electronic enclosures and HVAC industries for its parent company. Information contained in the petition indicates that the beneficiary was approved for classification as an L-1 intracompany transferee from December 21, 1999 until September 1, 2000. The beneficiary's I-94 Departure Record indicates that the beneficiary was admitted to the United States as an L-1 intracompany transferee on June 15, 2000 until September 1, 2000. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as its logistics manager for two years. The director determined that the evidence submitted had not established that the petitioning entity was a viable business operation, and therefore, was not doing business in the United States other than as an agent of the foreign entity. The director also determined that the petitioner had not established that the beneficiary would continue to be employed in the United States in a capacity involving specialized knowledge.

The director further determined that the beneficiary had not been employed abroad in a capacity involving specialized knowledge. This petition, however, is for an extension of previously approved employment. The issue of the beneficiary's employment abroad should have been discussed in connection with the adjudication of the original petition. This issue will not be addressed in this proceeding.

On appeal, counsel states that the petitioner established that the beneficiary satisfied the definition of specialized knowledge as it is found in the regulations. Counsel also states that since January 2000, the petitioning entity has been developing its business in the United States.

To establish L-1 eligibility under Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

The regulations at 8 C.F.R. 214.2(l)(14)(ii) state that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The first issue in this proceeding is whether the beneficiary will continue to be employed in the United States in a capacity involving specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. 1184(c)(2)(B), provides:

(A)n alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

The record indicates that the United States petitioning entity was established on July 6, 1999 and states that it is a wholly-owned subsidiary of Industrilas Forvaltnings AB (Industrilas Sweden), located in Nassjo, Sweden. The petitioner desires to continue its employment of the beneficiary for two years at an annual salary of $60,000.

In its letter of August 10, 1999, the secretary for the petitioning entity states that the beneficiary has been employed abroad since 1995. The letter goes on to state that the beneficiary began her employment in a financial administration position, and that in this position, she was required to manage the company's real estate holdings, financial reporting and accounting requirements, as well as maintaining the company's contractual obligations and governmental permits. The letter further states that the beneficiary completed a national ecology program at Ekotopia Aneby

(Sweden) and has completed numerous university courses at the University of Lund (Sweden).

The record of proceeding also contains information which indicates that the responsibilities and duties of the beneficiary's position in the United States are:

1. Establish parameters and procedures with the U.S. office which fully integrate with the reporting procedures of the Swedish parent company.

2. Establish parameters that will increase profitability of the company through the proper management of the transfer of goods between the U.S., Sweden, and other international corporate sites, as required. This includes the integration of transportation decisions, logistics of moving appropriate goods for sale, and managing production lead times.

3. Assisting in the production of forecasting reports that focus on the efforts to increase liquidity of funds and profitability of the U.S. and Swedish entities.

4. Making proper assessments of environmental issues that require mandatory compliance for our company in Sweden.

In its letter dated July 22, 2000, the petitioner states that as its logistics manager, the beneficiary will be primarily responsible for developing and managing the company's tracking system for goods being transported from Sweden to the U.S. market. The letter goes on to state that the beneficiary's specific duties will be to develop and implement a tracking system that will interface with the Swedish company and work effectively with the system established by the company's U.S. distributor, [redacted] The letter states further that the beneficiary developed an intimate knowledge of the company's production techniques and lead times that made her the ideal candidate to assist the U.S. company with the development of the tracking system.

In another letter dated September 14, 2000, counsel explains that the beneficiary and the administrative assistant whose services are utilized by the company are in charge of producing the necessary documentation to support the sale and importation and exportation of products. Counsel states that one aspect of the beneficiary's job is to coordinate the shipment of goods which involves decisions concerning the type of transfers allowed, customs issues, obtaining the proper clearances, ensuring sufficient products are on hand and coordinating the shipment method with the timing of the delivery. Counsel also states that the technical consulting services that the beneficiary provides Austin Romtech in the nature of transportation

issues and logistics has allowed them to experience significant increases in the sale of goods as well as an increased profit margin.

Upon review of the record, the petitioner has not presented convincing evidence to show that the beneficiary's training can be considered to constitute special or advanced knowledge. The petitioner has not demonstrated that the beneficiary's duties are so unique and out of the ordinary that their implementation requires specialized knowledge. The petitioner has not demonstrated that the beneficiary's knowledge constitutes an advanced level of knowledge of the processes and procedures of the petitioning entity. The beneficiary's knowledge of the processes and procedures of the company has not been shown to be substantially different from, or advanced in relation to, that of any logistics manager of a company involved in the sale, importation and exportation of products. The petitioner has not explained why the beneficiary's expertise in the aforementioned functions is unique and why her duties cannot be performed by any logistics manager. It must be evident from the documentation submitted that the beneficiary's actual daily activities will involve specialized knowledge. Based on the evidence submitted, the petitioner has not established that the beneficiary would be employed in the United States in a capacity involving specialized knowledge. For this reason, the petition may not be approved.

The second issue in this proceeding is whether the petitioning entity remains a viable business operation, and therefore, is doing business in the United States other than as an agent of the foreign entity.

The regulation at 8 C.F.R. 214.2(l)(1)(ii)(H) states:

> *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petition extension was filed on July 31, 2000. The secretary for the petitioning entity indicates in a letter dated July 22, 2000 that "it is a goal of the U.S. company to develop a tracking system that will enable [redacted] to provide enhanced service to the company's customers." [redacted] is the parent company's U.S. distributor.

Counsel states in its letter dated September 14, 2000 that "because of Industrilas distributorship relationship with [redacted] Industrilas US does not directly sell product to U.S. customers." Counsel also states that "...Industrilas does not actively promote its business through ordinary marketing efforts, and, as such, do

not spend their resources on yellow page advertisements or business lines." Further, the petitioning entity uses the leased space from [redacted] as an office. Counsel states that "since administrative time is purchased from [redacted] they do not need to provide space to accommodate administrative support staff." Counsel further states "...Industrilas does not transport goods directly to U.S. customers. Because of its distributorship relationship with [redacted] all goods that are sent to U.S. customers are forwarded by [redacted] to the U.S. customer." Finally, counsel states that "the petitioner does not handle the transfer of goods to the warehouse..."

Further, the record contains a 1999 U.S. Income Tax Return of a Foreign Corporation which lists the petitioning entity as its agent in the United States for that tax year.

In conclusion, the petitioner has not established that the petitioning entity conducts a viable business operation. The evidence presented does not demonstrate the petitioning entity "doing business" in the United States other than as an agent of the foreign entity. For this additional reason, the petition may not be approved.

Another issue in this proceeding, not raised by the director, is whether the petitioner has sufficiently established that a qualifying relationship exists between the United States and foreign entities. The evidence provided does not show that Industrilas U.S., LLC. is the wholly-owned subsidiary of Industrilas Forvaltnings AB (Sweden) as stated by the petitioner. The petitioner has not provided convincing evidence to establish that only 1,000 "units of membership" were issued to the foreign entity and that no other entity or person has purchased any additional units. The record contains no other evidence to show ownership and control of the U.S. entity. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.